



Docket No.: V9661.0074

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re Patent Application of:  
Hsiang-Fu Kung et al.

Application No.: 10/801,648

Confirmation No.: 2232

Filed: March 17, 2004

Art Unit: 1633

For: COMBINED ADENO-ASSOCIATED VIRUS  
AND ADENOVIRUS COCKTAIL GENE  
DELIVERY SYSTEM FOR HIGH  
EFFICIENCY GENE EXPRESSION  
WITHOUT ELICITING IMMUNE RESPONSE  
IN IMMUNO-COMPETENT SUBJECTS

Examiner: R. M. Kelly

New York, NY  
December 21, 2005

**RESPONSE TO RESTRICTION REQUIREMENT**

U.S. Patent and Trademark Office  
220 20th Street S.  
Customer Window, Mail Stop Amendment  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed December 21, 2005 (Paper No. 11152005), applicants hereby provisionally elect Group II (claims 10-16, 23-26, 29 and 30) for continued examination.

The Examiner has required restriction between the following Groups:

I. Claims 1-9, 17-22, and 27-28, directed to compositions of nucleic acids comprising vectors and promoters operatively linked to sequences encoding polypeptides, classified in class 435, subclass 320.1; and

II. Claims 10-16, 23-26, 29 and 30, directed to methods of treatment with nucleic acids, classified in class 514, subclass 44.

The Office Action further requires that Applicants should elect a single disclosed species in each of the following subgroups:

(i) Either a promoter of bone morphogenetic protein or a CAG promoter, for claims 2, 3, 5, 6, 11, 12, 14, 15, 18, 19, 21, 22, 24 and 25; and

(ii) Either an AAV vector comprising a BMP-encoding sequence, or an AAV and AdV vectors, each comprising a BMP-encoding sequence, for claims 1, 4, 10, 13, 17, 20 and 23.

Applicants hereby provisionally elect a CAG promoter for subgroup (i) and a combination of AAV and AdV vectors, each of which comprises a BMP-encoding sequence, for subgroup (ii), for examination.

As a result, however, the pending claims would be only claims 23, 25, 26, 29 and 30 and Applicants believe that, under such a circumstance, including another species with regard to promoters, *i.e.*, a promoter of bone morphogenetic protein, would not cause a serious burden on the Examiner regarding search and examination.

Accordingly, Applicants respectfully request that the both species of promoters, *i.e.*, a promoter of bone morphogenetic protein and a CAG promoter, be examined together within Group II which Applicants have herein provisionally elected.

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No fee is believed to be due for this submission. Should any fee be required, please charge such fee(s) to Deposit Account No. 50-2215.

Dated: December 21, 2005

Respectfully submitted,

By 

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